Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation hereby respectfully submits its reply to comments filed on September 30, 2005 in the above-captioned proceeding regarding four Joint Board proposals to reform the federal High Cost Universal Service Fund. Commenting parties have identified critical shortcomings with the proposals which preclude their adoption. Furthermore, various parties have proposed revisions to the Joint Board proposals, or to high cost universal service fund rules generally, which also are problematic and should not be adopted.

I. INTRODUCTION AND SUMMARY.

The comments filed in this proceeding exemplify the dilemma facing the Commission and the industry: everyone agrees that measures must be taken to stabilize the USF and to control the rapid growth in the federal High Cost USF, but there is no consensus about how to do it. Sprint Nextel acknowledges the Joint Board's efforts to move towards a more rational approach to high cost universal service funding, and believes that the various proposals include ideas that warrant further consideration. Unfortunately, the plans are fatally flawed in that they are not competitively neutral, and

impermissibly delegate excessive responsibility to the states to distribute federal universal service funds.

Moreover, none of the four Joint Board proposals, in its current overall form, adequately balances the many, often conflicting, public interest objectives at issue here – promoting universal service in high cost areas at rates comparable to those available in non-high cost areas; controlling the growth in the high cost fund; promoting deployment of advanced services; ensuring reasonable support to eligible carriers on a technologically and competitively neutral basis; and rebalancing local rates at "affordable" levels, to name just a few. Various commenting parties "pick and choose" among the four Joint Board proposals to advocate individual elements which they support; however, this self-serving approach clearly fails to balance conflicting public interest considerations and should be avoided. The better approach would be for the Commission to deal with universal service and intercarrier compensation reform on a comprehensive basis, so that more targeted high cost program revisions can be evaluated within an overall framework.

II. COMMENTING PARTIES HAVE IDENTIFIED CRITICAL SHORTCOMINGS IN THE JOINT BOARD PROPOSALS.

Insofar as Sprint Nextel is aware, none of the four Joint Board proposals received unqualified endorsement from any commenting party. To the contrary, many parties identified at least two critical shortcomings which preclude implementation of any of the four proposals: the plans are not competitively or technologically neutral; and their delegation of responsibility for allocating federal high cost funds to state authorities is legally suspect and administratively burdensome.

1. The Joint Board proposals are not competitively or technologically neutral.

The Joint Board proposals unreasonably discriminate against a discrete class of carriers or technology: Proposal D (the Universal Service Endpoint Report Plan (USERP)) recommends establishment of a separate fund for wireless competitive ETCs (CETCs); and Proposals B and C appear to limit high cost support to wireless ETCs, either by flatly prohibiting the portability of High Cost funds to CETCs in some areas (Proposal C, the Holistically Integrated Package (HIP)), or by basing per line support on each ETC's own costs, capped at the per line support of the incumbent (Proposal B, from Billy Jack Gregg).

Many parties vehemently oppose Proposal D's separate, capped fund with a 5-year expiration date for wireless CETCs, correctly pointing out that such proposal -- which has no wireline equivalent -- unreasonably discriminates against wireless carriers.[1] Even parties who support the idea of a separate wireless fund do not, and can not, dispute the blatantly discriminatory nature of this proposal. Instead, they suggest that high cost support to wireless CETCs is unnecessary,[2] or that a separate fund would help ensure that wireless CETCs are using high cost universal service funds appropriately.[3] Neither of these arguments has merit.

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[1] *See, e.g.,* Sprint Nextel, p. 5; Oregon PUC, p. 14; NASUCA, p. 31; Nextel Partners, p. 13; Dobson Cellular, p. 20; CTIA, p. 9; AT&T, p. 8; GCI, p. 16; *see also*, USTA, p. 9 (opposing "specialty" support funds).

[2] *See, e.g.,* OPASTCO, p. 18 (wireless CETCs "have been successfully serving rural areas for years without any high-cost support").

[3] *See, e.g.,* OPASTCO, p. 18 (a separate fund "would provide greater assurance that the funds received by wireless competitive ETCs would be used to achieve expanded service coverage that otherwise may not have occurred absent the receipt of support"); Alaska Regulatory Commission, p. 14; CenturyTel, p. 9.

It is true that some wireless carriers that now have ETC status began deploying their networks and offering service in some rural areas prior to the date on which they began receiving high cost universal service funds. However, one cannot infer from this that wireless CETCs would have expanded their networks into other rural areas (either at all, or as quickly) without the investment incentive offered by high cost universal service support. Certainly, no carrier other than the CETC has the information necessary to evaluate whether the support received was "necessary" or not. And, to the extent that parties raise the "necessary" argument as a collateral attack on the policy of granting non-incumbents ETC status, such argument should be dismissed as irrelevant.

It also is unclear how a separate fund would help to ensure that wireless CETC high cost funds are used appropriately. Presumably, the same "appropriate use" rules apply to all recipients of federal high cost universal service support, and any audit of a recipient's operations would review similar types of information and records. Therefore, having a separate wireless CETC fund -- particularly one that is subject to caps and an expiration date which do not apply to any wireline fund – does nothing to ensure proper use or to make wireless CETC transactions more transparent.

2. States should not be given responsibility for distributing federal high cost funds.

With the exception of a few state commissions, commenting parties overwhelmingly oppose allowing each state regulatory body to determine the distribution of federal high cost funds in that state (through the state allocation mechanism or block

grant approach), for many reasons.[4] First, it is not at all clear that the FCC even has the statutory authority to delegate this responsibility to the states. Second, because the Joint Board proposals would grant states broad latitude in determining USF distributions to both individual carriers and categories of carriers, the inevitable outcome will be a patchwork of different policies (some of which may well conflict with federal policy) and inconsistent results. Support would not be predictable (making carriers reluctant to invest in their rural networks), and there would be little assurance that support would be distributed on a competitively or technologically neutral basis. Third, state delegation would be administratively burdensome and likely prohibitively expensive. Besides the costs incurred by each of the 51 state entities to administer their individual programs[5] (a "cumbersome new layer of bureaucracy," OPASTCO, p. 11), there are the increased expenses incurred by carriers to comply with the individual requirements of each of the state regulatory bodies from which the carrier is seeking high cost support, and the Commission's (and/or USAC's) costs of developing federal guidelines and standards, auditing state programs to ensure compliance, and adjudicating appeals by any party that is aggrieved by the state mechanisms.

The primary rationale offered by the few parties advocating state delegation is that states "will be able to base their distribution decisions on ongoing direct knowledge of how various ETCs are performing and whether they are living up to their

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[4] *See, e.g.,* Sprint Nextel, p. 12; Frontier and Citizens, p. 9; Home Telephone Co., p. 5; Minnesota Independent Coalition, p. 2; USTA, p. 7; OPASTCO, p. 7; NASUCA, p. 29; Dobson Cellular, p. 12; CTIA, p. 13; AT&T, p. 6; GCI, p. 18; BellSouth, p. 2; ACS of Alaska, p. 4; Centennial, p. 7.

[5] Indeed, the Iowa Utilities Board expressed concern about the "transfer of a great deal of effort and responsibility" to the states, and the cost of handling such responsibility (p. 3).

commitments."[6] Sprint Nextel does not dispute that state commissions may have more knowledge about local conditions than do federal regulators; certainly, this knowledge is invaluable in the ETC certification process. However, the benefits associated with knowledge of local conditions are far outweighed by the administrative costs of state delegation discussed above. Even more serious, the very notion of allowing states to make "tailored distributions" of federal high cost universal service funds based on "local knowledge" (Oregon, p. 10) raises the highly disturbing specter of arbitrary allocations based on discriminatory or ad hoc standards. Every effort must be made to ensure that all carriers, and all classes of carriers, are treated in a competitively neutral fashion.

III. THE COMMISSION SHOULD FOCUS ON COMPREHENSIVE REFORM RATHER THAN PIECEMEAL REVISIONS TO THE HIGH COST FUND RULES.

Various commenting parties have suggested revisions to both the high cost fund rules generally, and the four Joint Board proposals specifically. Because almost any change can have a significant impact on end user rates, on contributions made to the fund, and on receipt of universal service dollars, the Commission should act comprehensively, rather than attempting to reform the high cost universal service program on a piecemeal basis. Without knowing how the contribution methodology and intercarrier compensation regime are to be revised, and without any sense of how the various public interest criteria are to be weighted, it is impossible to assess the impact or the desirability of narrower, piecemeal revisions.

Certain parties, for example, urge that high cost universal service funds should be distributed purely on the basis of geography, rather than on a carrier's classification as

[6] Oregon, p. 10; *see also*, Maine PUC and Vermont PSB, p. 3; Qwest, p. 14.

"rural" or "non-rural";[7] or that high cost funds should be explicitly made available (*e.g.*, loop support uncapped) to support broadband deployment.[8] While it may be argued that certain benefits derive from both of these proposals, both proposals also have implications for the size of the fund that must be carefully considered and are best addressed in a more comprehensive reform of USF. On the flip side, some parties advocate classifying carriers as rural or non-rural based on their state-wide total number of lines.[9] While this might relieve some of the pressure on high cost fund growth by reducing the amount a carrier may receive in high cost support, it would improperly require an expansion of internal cross-subsidization and would be particularly unfair to mid-size carriers that cannot easily recover costs in their high cost areas with revenues from their lower cost areas.

Despite Sprint Nextel's concerns about piecemeal reforms, one area that can and should be pursued immediately is rate rebalancing. In many jurisdictions, local rates remain extremely low -- far below the cost of providing the service, and far below what most households could, and are willing to pay. In these jurisdictions, the public interest would be well served by a careful examination of what constitutes a reasonable local service rate. Raising local service rates to "reasonable" levels would help relieve some of the pressure on the ballooning USF,[10] as well as mitigate some access charge arbitrage. Certain parties may reject the notion of increasing basic local service rates because such

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[7] *See, e.g.,* Missouri PSC, p. 10; Maine PUC and Vermont PSB, p. 1; Oregon PUC, p. 4; SBC, p. 3.
[8] *See, e.g.,* ACS of Alaska, p. 14; Oregon PUC, p. 5.
[9] *See, e.g.,* Dobson Cellular, p. 8; CTIA, p. 2; Verizon, p. 17.
[10] Support would be the difference between the cost of providing local service and an "objective rate benchmark set at an 'affordable' level" (SBC, p. 5).

action constitutes "abandon[ment of] the key universal service goal of maintaining affordable rates."[11] However, this line of reasoning assumes – incorrectly, in Sprint Nextel's view -- that all basic local service rates are currently at maximum "affordable" levels. In fact, as noted above, some local rates remain well below what consumers are willing and able to pay.

IV. CONCLUSION.

Sprint Nextel agrees with the Joint Board that additional reform to the federal high cost universal service program is necessary. However, the four plans proposed by the Joint Board contain serious shortcomings which preclude adoption of these plans. Rather than piecemeal revisions, whose impact cannot be determined in isolation, the Commission should reform the USF and intercarrier compensation regimes on a comprehensive basis.

Respectfully submitted,

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[11] Frontier and Citizens, p. 3. Indeed, Frontier and Citizens admit that some local residential rates are "frequently" set at very low rates "intentionally" (p. 8).

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of October 2005, copies of Sprint Nextel Corporation's Reply Comments in WC Docket No. 96-45 were sent by e-mail or First Class Mail, postage prepaid, to the parties listed on the attached service list.

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